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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,745	08/17/2001	Todd Hoekstra	HOE002USPT01	4601

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EXAMINER

PARADISO, JOHN ROGER

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

<b>Office Action Summary</b>	<b>Application No.</b> 09/932,745	<b>Applicant(s)</b> HOEKSTRA, TODD	
	<b>Examiner</b> John R. Paradiso	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-21, 38-41, 46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-21, 38-41, and 46-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Invention II, claims 1-23, 38-41, and 46-47, in Paper No. 10 is acknowledged. (Note that on page 1 of the election entered as paper 10, claims 22-23 are omitted. This is assumed to be a simple typographical error and claims 22-23 are included in this action as being part of the elected Invention II, since they depend from independent claim 14.)

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7-16, 18-23, 38-41, and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over WEISS ET AL (US 6117505) in view of OTSU ET AL (US 6449925)

WEISS ET AL discloses an article comprising a longitudinally continuous web comprising two superimposed layers: a first layer (11, 12) that is a gas-permeable microbial barrier layer and a second layer (13) that is a thermoplastic gas impermeable layer. (See WEISS ET AL col. 6:3-31, and Fig. 1-2.)

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WEISS ET AL does not disclose perforations / lines of weakness in the first and second layers at the same positions. WEISS ET AL implies, but does not specifically disclose the layers being formed from continuous webs.

OTSU ET AL (US 6449925) discloses a longitudinal web comprising a first layer and a second layer, with the first and second layer superimposed upon one another and longitudinally spaced lateral lines of weakness / perforations made in both layers at the same points so that the packages can be separated. (See OTSU ET AL col. 3:1-7 and Figs. 1 and 3.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make longitudinally spaced lateral lines of weakness / perforations, as taught by OTSU ET AL, in the invention of WEISS ET AL in both layers at the same points in order to provide a convenient method for separating the bags from one another when needed for use.

Regarding claims 2 and 3, Examiner notes that lines of separation and lines of perforation are art-recognized equivalents and it would have been obvious to one of ordinary skill in the art at the time the invention was made to make either lines of perforation or lines of weakness in either layer of the combination of WEISS ET AL and OTSU ET AL, depending on which was more convenient for a user when it was desired to separate the formed packages.

Regarding claims 7, 8, and 18, WEISS ET AL discloses a microbe-impervious peelable seal (B) near the lines of weakness / perforations. (WEISS ET AL col 8:1-3)

Regarding claims 10 and 20, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the choice of a spunbonded olefin as the first layer, since this material is well known in the art of packaging and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 11 and 21, the thermoplastic layer disclosed by WEISS ET AL is transparent.

Regarding claim 13 and 23, OTSU ET AL does not disclose the specifics of the claimed perforations regarding area ratios and perfs per cm., however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the perforations in the combination of WEISS ET AL and OTSU ET AL of the claimed dimensions in order to achieve optimum perforation ease and utility, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 15, OTSU ET AL discloses forming the superimposed web layers into a roll (10) (OTSU ET AL Fig. 3)

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4. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over WEISS ET AL in view of OTSU ET AL as applied to claims 5 and 16 above, and further in view of McINTOSH, SR. ET AL (US 4226410).

McINTOSH, SR. ET AL discloses a web of material (16) which, after processing and perforating, is folded in a pleated stack (Fig. 1a)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to fold the finished articles in the combination of WEISS ET AL and OTSU ET AL in a pleated stack, as taught by McINTOSH, SR. ET AL, in order to more easily package the stack in standard boxes.

#### *Reference Citations*

5. The following prior art made of record and not relied upon is considered pertinent to Applicant's disclosure:

- WURZBURGER discloses a series of covers stored in a pleated stack.
- THOMPSON, JR. discloses a sterilizable container.
- HEKTOEN discloses a continuous web of material, perforated for use.

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*Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center receptionist.



Examiner John Paradiso: (703) 308-2825

August 10, 2003

Additional Phone Numbers:

Supervisor Rinaldi Rada: (703) 308-2187

Fax (Direct to Examiner): (703) 746-3253

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